

Brownfields Risk Assessment FAQs

February 1, 2008

It is important to note that this document does not deal with site specific conditions and should not be used as a substitute for the exercise of professional judgment. It should also be noted that the description of the legislative and regulatory requirements given in this document are for convenience only. The relevant legislation and regulations, available at www.e-laws.gov.on.ca, should be reviewed to determine the exact requirements.

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Date of Last Update of this document: February 1, 2008

Main Body of FAQ

Q#	A. Qualified Persons	Date of Last Update
Q1	What are the regulatory requirements to be a Qualified Person for Risk Assessment (QP_{RA})?	February 1, 2008

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Q1: What are the regulatory requirements to be a Qualified Person for Risk Assessment (QP_{RA})?

A1: Qualified persons for the purpose of preparing a risk assessment are defined based on education and years of related experience. Part II (6) of O.Reg. 153/04 details the regulatory requirements and is recreated below.

Qualified persons, risk assessment (taken from O.Reg. 153/04)

- 6.** (1) *A person meets the qualifications to be a qualified person for the purposes of Section 168.1 of the Act in relation to the preparation or supervision of a risk assessment if,*
- (a) the person holds a bachelor's degree in science, engineering or applied technology from a post-secondary institution;*
 - (b) the person has experience in the conduct or supervision of environmental site assessments, or in the conduct, supervision or review of assessment of risk described in clause (c), or in any combination of both, as follows:*
 - (i) if the person holds a doctoral degree in science or engineering from a university, five years' experience,*
 - (ii) if the person holds a master's degree in science or engineering from a university, seven years' experience,*
 - (iii) in any other case, eight years' experience; and*
 - (c) within the period of experience required by clause (b), the person has two years' experience,*

- (i) in the conduct or supervision of an assessment of risk, or*
- (ii) in the technical or scientific review of an assessment of risk on behalf of a public authority.*

Q#	B. PRE-SUBMISSION FORMS (PSF)	Date of Last Update
Q1	What is the purpose of the pre-submission form (PSF)?	February 1, 2008
Q2	What is the ministry turn-around time for the review of pre-submission forms?	February 1, 2008
Q3	What must be included in the “Contaminant Inventory” Section of the PSF?	February 1, 2008
Q4	How should I present my Conceptual Site Model (CSM) to the ministry when risk management controls will block some of the exposure pathways?	February 1, 2008

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Guidance on the PSF is provided in the MOE Technical Update “Preparation and Submission of a Pre-Submission Form for a risk assessment to be submitted under the new Record of Site Condition Regulation (O.Reg. 153/04)” and is available at: (<http://www.ene.gov.on.ca/envision/gp/4725e.pdf>).

Q1: What is the purpose of the pre-submission form (PSF)?

A1: The PSF was developed in response to stakeholder requests for a feedback mechanism early in the risk assessment process. The PSF allows for early feedback from the MOE on the proposed risk assessment approach. By providing an overview of the problem formulation and conceptual site model, MOE reviewers are able to provide advice to proponents on the requirements of O.Reg. 153/04. This should occur early enough in the process to allow proponents to modify their approach based on MOE comments and thus increase the likelihood that the risk assessment will satisfy the requirements of O.Reg. 153/04. The ministry will also provide as part of the comments, the anticipated regulatory review timeline for the proposed approach (8, 16, or 22 weeks).

The PSF supports the declaration of the QP_{RA} to the Ministry, allowing for the submission of a risk assessment report. The PSF also authorises the QP_{RA} to act on behalf of the property owner for the purpose of supervising the risk assessment work and preparing the risk assessment report.

Q2: What is the ministry turn-around time for the review of pre-submission forms?

A2. There is no regulated turn around time on PSF's. The ministry attempts to turn around comments on the PSF as quickly as possible. Typical turn-around times range from 5 to 7 weeks.

Q3: What must be included in the “Contaminant Inventory” Section of the PSF?

A3: The QP is required to determine which of the contaminants identified in the Phase 1 and Phase 2 Environmental Site Assessments (ESA) are of potential concern and which should be included in the risk assessment (RA). The Inventory lists all contaminants considered, based on the Phase 1 and 2 ESAs and identifies those that are COCs (Contaminants of Concern), as defined by O.Reg. 153/04. The QP has some discretion in determining if a contaminant is of potential concern by considering the following:

- If a Site Condition Standard (SCS) is exceeded, the contaminant **MUST** be considered as a COC;
- If a SCS is met but the Conceptual Site Model (CSM) is not adequately represented by the generic assumptions used by the MOE to develop the Site Condition Standards, the QP **MAY** wish to **INCLUDE** this contaminant as a COC;
- If there is no SCS and the contaminant is of toxicological concern or present at a potentially significant concentration, the QP **MAY** wish to **INCLUDE** this contaminant as a COC.
- If there is no site condition standard and it is likely the chemical is of natural origin, (i.e. not related to site activities identified in the Phase 1 ESA) the QP **MAY** wish to **EXCLUDE** the chemical from further consideration.

The rationale for QP discretion should be provided in text accompanying the PSF. If a contaminant is not listed in the Inventory, the QP is considered to have not assessed the property for that contaminant and determined that it is not considered relevant to the site history or potential risk.

Q4: How should I present my Conceptual Site Model (CSM) to the ministry when risk management controls will block some of the exposure pathways?

A4: A CSM should indicate all pathways which are present or potentially present and which of those pathways are blocked by RMM. The ministry encourages the presentation of multiple CSMs when appropriate. i.e. CSM with risk management and CSM without. O.Reg 153/04 requires that,

where RMM are proposed, a separate CSM be provided that identifies the RMM.

Separate CSMs should be presented for Site Characterization, Human Health risk assessment and Ecological risk assessment. Refer to the relevant clauses in Section 3 of Schedule C.

Q#	C. RISK ASSESSMENT PROCESS	Date of Last Update
Q1	What is the review timeline for risk assessments?	February 1, 2008
Q2	Are there any fees for the ministry review of risk assessments?	February 1, 2008
Q3	What information is required when filing an RSC on a RA accepted prior to October 1, 2004?	February 1, 2008
Q4	How can I view or obtain a copy of a risk assessment report?	February 1, 2008
Q5	What information is required if a change in QP_{RA} or property owner occurs AFTER a pre-submission form is submitted?	February 1, 2008
Q6	Under O.Reg. 153/04, what can be done on a property currently undergoing a risk assessment, but before the RSC has been issued?	February 1, 2008
Q7	What is the best way to communicate with MOE during the review process?	February 1, 2008

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Guidance on the general risk assessment process is provided in the MOE publication "Procedures for the Use of Risk Assessment under Part XV.1 of the Environmental Protection Act" and is available at:
<http://www.ene.gov.on.ca/envision/gp/5404e.pdf>

Q1: What is the review timeline for risk assessments?

A1: Under O.Reg. 153/04, the risk assessment review timeline will be 16 weeks unless:

1. You are submitting a limited scope risk assessment or an estimation of natural local background risk assessment: the review timeline is 8 weeks;

2. You are submitting a new science risk assessment or a wider area of abatement risk assessment: the review timeline is 22 weeks.

Q2: Are there any fees for the ministry review of risk assessments?

A2: There are no fees for the review of risk assessments or pre-submission forms.

Q3: What information is required when filing an RSC on a RA accepted prior to October 1, 2004?

A3: The following items are required by the MOE:

1. Copy of Regional Director's Letter of Acceptance of the SSRA;
2. All the information from the first page of the PSF (property location information);
3. Information from the last two pages of the PSF (QP_{RA} and property owner information);
4. State the applicable Site Condition Standards as assumed in the RA (i.e. the applicable table of Site Condition Standards);
5. Copy of the table of property specific standards as proposed in the SSRA and indication of where in the SSRA report this information can be found;
6. Proposed property use; and
7. Copy of Order or CPU that was issued by the District (if one was issued)

Q4: How can I view or obtain a copy of a risk assessment report?

A4: The following options exist:

1. Solicit a copy of the RA report from the property owner;
2. If a request **to view** a risk assessment report is made, MOE will contact the property owner to see if he/she agrees that it can be released. If the property **owner agrees in writing**, then the requestor can be allowed to view the risk assessment during business hours either in the MOE District Office or at Standards Development Branch; and,
3. Request a copy of the report through the FOI process.

Q5: What information is required if a change in QP_{RA} or property owner occurs AFTER a pre-submission form is submitted?

A5: O.Reg. 153/04 states:

Part 1 – Section 13 of Schedule C of the O.Reg. 153/04:

*If, at any time, after submitting the pre-submission form, a) the qualified person who is identified in the pre-submission form as being responsible for preparation of the risk assessment changes, or b) the owner mentioned who is identified in the pre-submission form changes; **the***

property owner shall give notice to the Director of the change in circumstance.

The Director must be notified of any change in QP_{RA} via submission of an appropriate letter from the property owner to the Director. In addition, Sections 1 and 8 through 11 of the PSF form must be completed (signed) and attached. The cover letter should include the appropriate MOE Reference Number (SDB file number and/or IDS reference number), or if not known, then it should include a completed Section 1 of the PSF form. All documents should be sent to the:

The Director,
Environmental Assessment and Approvals Branch,
2 St Clair Avenue West
Toronto, ON
M4V 1L5

Q6: Under O.Reg. 153/04, what can be done on a property currently undergoing a risk assessment, but before the RSC has been filed?

A6: On-site work may include excavation and shoring in relation to development, the construction of retaining walls and remedial activities (for soil and groundwater). Where an RSC is required under the EPA, the building of structures may not begin before the RSC is filed for the property as a building permit is required and cannot be issued before the RSC is filed.

Q7: What is the best way to communicate with MOE during the review process?

A7: The best option is via email to the Risk Assessment Review Coordinator:

sdbreview@Ontario.ca

You can also submit questions in writing to:

Risk Assessment Coordinator (Mark Turner)
Standards Development Branch
40 St Clair Ave W, 7th floor
Toronto, ON
M4V 1M5
(416) 327-6949

Q#	D. CONDUCTING RISK ASSESSMENTS	Date of Last Update
Q1	Is there written guidance available for conducting RAs under O.Reg. 153/04?	February 1, 2008
Q2	How does one determine the human health effects of a chemical recognised as having both carcinogenic and non-carcinogenic systemic effects?	February 1, 2008
Q3	Does MOE review radioactive chemicals during the RA process?	February 1, 2008
Q4	When is a qualitative risk assessment appropriate/acceptable?	February 1, 2008
Q5	Why does the ministry require the calculation of risk both without risk management measures and with risk management measures if these are proposed?	February 1, 2008
Q6	Can alternative property specific standards be developed for the top 20 cm of the surface soil, given that most ecological VECs are only exposed to the top 10-20 cm of soil?	February 1, 2008

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Q1: Is there written guidance available for conducting RAs under O.Reg. 153/04?

A1: Yes. The ministry has published a document titled, "Procedures for the Use of Risk Assessment under Part XV.1 of the Environmental Protection Act". It is available at:
<http://www.ene.gov.on.ca/envision/land/decomm/condition.htm>

Q2: If a chemical can elicit both non-threshold carcinogenic and non-carcinogenic toxic effects, and these effects are predicted to occur at approximately the same concentrations, how should the chemical be evaluated in the HHRA?

A2: Risks should be characterized for both the cancer and non-cancer critical effects. If health-based concentrations are subsequently back-calculated

for this chemical to help guide a risk management plan or clean-up strategy, the lower of the two health-based concentrations should be used.

Q3: Does MOE review radioactive chemicals during the RA process?

A3: The MOE does not regulate radioactive chemicals (associated with the radioactive contamination of soil or radioactive exposure, for example). These chemicals are dealt with at the federal level by the Canadian Nuclear Safety Commission (CNSC). The CNSC website: <http://www.nuclearsafety.gc.ca/eng/>

Q4: When is a qualitative risk assessment appropriate/acceptable?

A4: In a qualitative analysis, the QP_{RA} should explain why a qualitative approach was used and justify why a quantitative analysis was not appropriate or not required. A qualitative analysis is generally appropriate when justifying the use of a MOE generic standard. Examples of situations suitable for a qualitative interpretation of risk would include the following;

- Based on the results of the exposure assessment and the toxicity assessment, the full depth generic site condition standards contained in Table 2 of the document “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the EPA” are protective of the sensitive site conditions (including shallow water table) at the site.
- Based on the results of the exposure assessment and the toxicity assessment, the human health and/or ecological component values contained in the document “Rationale for the Development and Application of Generic Soil, Ground Water and Sediment Criteria for use at Contaminated Sites in Ontario” (MOE, 1996) are protective of the human/ecological receptors at the site.

Refer to the Procedures document for greater details and the minimum requirements for a qualitative analysis (section 4.4.2 for HHRA and section 5.6.2 for qualitative ERA).

Q5: Why does the ministry require the calculation of risk both without risk management measures (RMM) and with risk management measures if these are proposed?

A5: It is important to be aware of the level of risk (without RMM) for a given property for the following reasons:

1. In the event that the RMM fail, the ministry must be aware of the level of risk (without RMM) present on a property;
2. For abatement purposes, the MOE district office needs to be aware of the level of risk (without RMM) on a property; and

3. The level of risk (without RMM) may influence the level of technical/engineering detail that goes into the CPU, the level of reporting back to the ministry and/or the need for financial assurance.

The QP_{RA} should be aware of these risks as this should inform contingency and and/or monitoring plans.

Q6: Can alternative property specific standards be developed for the top 20 cm of the surface soil, given that most ecological Valued Ecological Components (VECs) are only exposed to the top 10-20 cm of soil?

A6: The statement that most ecological VECs may be exposed primarily to the top 10 or 20 cm of soil may be true for a number of mammal and avian species but would not apply to reptiles, amphibians, burrowing animals, soil organisms and deep rooted plants such as trees and shrubs. Different property specific standards for surface soil and subsurface soil can be developed for a single site in a risk assessment. The appropriate depth for stratified property specific standards is proposed by the QP_{RA} according to the Conceptual Site Model..

Q#	E. CONTAMINANTS OF CONCERN and STANDARDS	Date of Last Update
Q1	Under what situations can free product be left on site?	February 1, 2008
Q2	Are proponents required to develop a property specific standard (PSS) for every contaminant of concern (COC)?	February 1, 2008
Q3	Can the proposed property specific standard in a risk assessment be the same as the maximum concentration found on site?	February 1, 2008
Q4	When is it considered appropriate to composite (average) soil samples?	February 1, 2008
Q5	Which standards are appropriate for PHCs in groundwater?	February 1, 2008
Q6	When should PWQOs be used as opposed to GW3 values when assessing potential impacts to off-site or on-site surface water bodies?	February 1, 2008
Q7	What are the accreditation requirements for laboratories outside of Ontario when performing a risk assessment?	February 1, 2008
Q8	Do the Regulation's Site Condition Standards have to be met for the areas where highway de-icing salt was stored?	February 1, 2008
Q9	Can a risk assessment propose standards for an off-site affected property?	February 1, 2008
Q10	What are the ministry's expectations regarding the interpretation of off-site health and ecological impacts within a RA?	February 1, 2008
Q11	What does O.Reg. 153/04 state about the use of non-potable site condition standards?	February 1, 2008
Q12	What do I do if I have a background beryllium content which is higher than the applicable site condition standard?	February 1, 2008
Q13	How should a Qualified Person take into consideration off-site impacts when conducting ESA work in relation to conducting a risk assessment?	February 1, 2008

Q14	If a property specific standards (PSS) is back-calculated from an acceptable Hazard Quotient of 0.2 or cancer risk level of 1E-6 (for example), and the PSS is <u>less</u> than the applicable Site Condition Standard (e.g., Table 3), does MOE allow the PSS to default to the applicable Site Condition Standards (SCS) (e.g., Table 3)?	February 1, 2008
Q15	Can the QP_{RA} screen for relevant COCs in the HHRA and/or ERA sections of a risk assessment?	February 1, 2008
Q16	What do I do when there is a <u>“N/V” or “N/A” listed</u> instead of a numerical standard?	February 1, 2008

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Q1: Under what situations can free product be left on site?

A1: O.Reg. 153/04 states that the generic site condition standards are met only if there is no free product. No such limitation is stated for meeting property specific standards specified in a risk assessment. If free product is left on site it should be limited to what can not be practicably removed and must be supported by a risk assessment and a risk management plan. Schedule C - Table 1 states that free product formation (all NAPL) must be risk managed where groundwater property specific standards are greater than ½ the solubility limit. The guidance document “Procedures for the Use of Risk Assessment Under Part XV.1 of the EPA” (Procedures Document) Section 2.2.2 Special Considerations for Groundwater Standards (p. 19 of the Procedures Document) states that free product on a site should be removed to the extent technologically practicable. Property specific standards specified in a risk assessment should not result in the formation of free product, but provision exists for situations in which it cannot be practicably removed. Property specific standards specified for potable groundwater use should not result in a sheen, taste or odour due to contamination.

The issuance of a Certificate of Property Use and registration on title through a Certificate of Requirement may be required where risk management is necessary to control the potential for free product. The local MOE district office is responsible for the issuance of CPU's and should be consulted regarding their specific requirements.

Q2: Are proponents required to develop a property specific standard (PSS) for every contaminant of concern (COC)?

A2: Yes. Any contaminant exceeding a site condition standard must be retained as a contaminant of concern and a property specific standard must be proposed, regardless of risk.

Any contaminant for which there is no site condition standard may be a COC depending upon the QP's assessment. If the QP_{RA} is of the opinion that a contaminant which has no site condition standard is a COC and does a risk assessment that includes it, then they must propose a property specific standard for that COC in the risk assessment, even if they determine that there is no risk.

However, if both the QP_{ESA} and QP_{RA} are of the opinion that a substance which has no site condition standard is not considered to be a COC, a property specific standard is not required. This would usually be the case if the substance is considered to be naturally occurring in place and not related to a previous land use (see Q12 for additional detail). Justification for excluding this substance must be provided in the risk assessment.

Q3: Can the proposed property specific standard in a risk assessment be the same as the maximum concentration found on site?

A3: The proposed property specific standard may be the maximum measured concentration, or an estimate of the maximum, provided the risk assessment has characterized the risk due to the property specific standard proposed and found that risk to be acceptable. Risk management measures may be proposed to ensure that risks are and will remain at acceptable levels.

Q4: When is it considered appropriate to composite (average) soil samples?

A4: Section 49 of O.Reg. 153/04 defines a sample location as an area with a 2m radius. If two or more samples are collected from the same sample location at the same depth, the average of the samples must meet the applicable site condition standard for the property to be considered to meet the standard. This means that two samples collected from a test pit at the same depth but 2.5m apart could be averaged.

The intent of this provision of the regulation is to allow samples within an area of limited size (4m diameter) to be composited (or averaged) for the purpose of characterization as a single type of material. Some heterogeneity within the material is allowed, provided the average concentration of the material meets the applicable site condition standard.

The area limitation is intended to limit the size of any 'hotspot' that may be contained within the material.

It is up to the Qualified Person who signs the RSC to determine on a case-by-case basis whether compositing or averaging of samples within the 2m radius is appropriate in order to sign the certification in the RSC, i.e. that the contamination will not interfere with the proposed use.

Calculating the average of pH results requires special consideration. Information on how to average pH in soil is available in the MOE *Technical Update: Environmentally Sensitive Areas: pH Levels*, available at <http://www.ene.gov.on.ca/envision/land/decomm/condition.htm>

Q5: Which standards are appropriate for PHCs in non-potable groundwater?

A5: Section 43 of O.Reg. 153/04 states that in cases where a cell in a table in the Soil, Groundwater and Sediment Standards indicated "N/V" for a given contaminant and that the contaminant is detected on or under a property, the owner may submit a 'new science' risk assessment if the owner or qualified person is of the opinion that a risk assessment is necessary in order to complete the certifications in a RSC.

There is no value ("N/V") for PHCs in groundwater in Table 3 Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition. Therefore, the proponent has the option of defaulting to the ground water standard in Table 2 for a Potable Ground Water Condition or conducting a new science RA for PHCs in non-potable groundwater for the Site.

Q6: When should the Provincial Water Quality Objectives (PWQO) be used as opposed to the GW3 values when assessing potential impacts to off-site or on-site surface water bodies?

A6: PWQOs are meant to be used as a benchmark value in ambient waters in open waters and are generally not appropriate for use in a Brownfields situation. If a Site is determined to be "sensitive" because it is located less than 30m distance from a surface water body, the GW3 values may not be protective of aquatic receptors. GW3 values assume that a 10 fold dilution will occur prior to reaching aquatic receptors.

At any site, the groundwater concentration should meet 1/10th the GW3 value at the groundwater/surface water interface; i.e. the toxicity-based surface water concentration on which the GW3 values is based. The RA for a 'sensitive site' should demonstrate that this is the case.

Q7: What are the accreditation requirements for laboratories outside of Ontario?

A7: The standard that Ontario uses for accreditation is that the laboratory must be accredited to ISO/IEC 17025, by a recognized accreditation body. Recognized means a signatory to the International Laboratory Accreditation Cooperation (ILAC). In Canada, the equivalent would be the Standards Council of Canada (SCC). The lab must also be accredited for specific methods where proficiency testing (PT) participation is a requirement of accreditation, by the accreditation body. CAEAL Labs also meet the accreditation criteria. All labs must adhere to the method requirements, including the detection limits, outlined in the "Protocol for Analytical Methods Used in the Assessment of Properties under Part XV.1 of the Environmental Protection Act" published by the Ministry and dated March 9, 2004, as it may be amended from time to time.

In the US, laboratories might meet MOE requirements if they are A2LA accredited and participate in the PT studies that the ministry requires. A Technical Update titled "Laboratory Accreditation Requirements under the New Record of Site Condition Regulation (O.Reg. 153/04)" is available at: <http://www.ene.gov.on.ca/envision/gp/3974e01.pdf>

Q8: Do the Regulation's Site Condition Standards have to be met for the areas where highway de-icing salt was stored?

A8: By exemption provided in Section 48(3) of the Regulation, Site Condition Standards for de-icing salt do not apply to properties along highways receiving road salting for the purpose of highway safety. However this section does not apply to properties that were used for storage of salt, or parking lots, private roadways and driveways.

Q9: Can a risk assessment propose standards for an off-site affected property?

A9: A risk assessment conducted under O.Reg. 153/04 applies only to the property owned by the person who signed the PSF, in which they certify that they own the property and that the QP_{RA} who undertakes the RA does so on their behalf. A risk assessment conducted under O.Reg. 153/04 cannot specify standards for property outside the subject property boundary. It should be noted that the regulation requires that the QP_{RA} certify whether meeting the property specific standards will result in an exceedance of the applicable Full Depth site condition standards at the nearest off-site receptor (human or ecological). Where exceedance of the applicable site condition standard is indicated, Table 1 of Schedule C requires the QP_{RA} to provide information in the HHRA and ERA regarding the contaminant, the applicable site condition standard for that

contaminant, the receptor(s) and location of the receptor(s). **Adjacent** property owners have the option of participating in the risk assessment as an “owner” by co-signing the PSF with the source property owner.

Q10: What are the ministry’s expectations regarding the interpretation of off-site health and ecological impacts within a RA?

A10: As part of the Certified Statements in the RA report Appendices, the QP_{RA} must certify whether meeting the property specific standards will result in an exceedance of the applicable Full Depth site condition standards at the closest off-site receptor (human or ecological). For abatement purposes, the MOE district office needs to be aware of the relative level of risk at the off-site property as compared to the applicable site condition standard. For a given COC, the outcome of the potential for any off-site exceedance of the soil and/or ground water site condition standard will be determined by the Ministry District Office, which will prioritize any action that may be warranted on a specific property, considering the potential human health and ecological risk level, and other impacts which may result from the off-site exceedance. Details pertaining to the ministry’s expectations regarding the interpretation of off-site health and ecological impacts can be found in the Procedures document, sections 4.4.4 and 5.6.4 respectively. “Procedures for the Use of Risk Assessment under Part XV.1 of the Environmental Protection Act” is available at:
<http://www.ene.gov.on.ca/envision/gp/5404e.pdf>

Q11: What does O.Reg. 153/04 state about the use of non-potable site condition standards?

A11: Non-potable ground water site condition standards may be applied only if all the circumstances described below exist:

- a) the property, and all other properties located, in whole or in part, within 100 metres of the boundaries of the property, are supplied by a municipal drinking-water system as defined in the Safe Drinking Water Act, 2002;
- b) the property is either,
 - (i) not located in an area designated in a municipal official plan as a well-head protection area or other designation identified by the municipality for the protection of ground water, or
 - (ii) if it is located in such a designated area, the municipality has consented in writing to the application of the non-potable ground water site condition standards in preparing a record of site condition for the property;

- c) the record of site condition does not specify agricultural or other use as the type of property use for which the record of site condition is filed;
- d) the owner has given the clerk of the local municipality, and of any upper-tier municipality, in which the property is located written notice of intention to apply the non-potable ground water site condition standards in preparing a record of site condition for the property; and
- e) within 30 days after receiving the notice described in clause (d),
 - (i) neither the local municipality nor the upper-tier municipality (if any) has given written notice (in this clause called a “notice of objection”) to the owner that it objects to that application of the non-potable ground water site condition standards, or
 - (ii) a local or upper-tier municipality has given a notice of objection to the owner, and the municipality, at any time after giving the notice of objection, has withdrawn the objection and given written consent to the owner for the application of the non-potable ground water site condition standards.

The qualified person should also carefully consider the locations of private wells and surface water intakes, hydrogeology and contaminant transport in determining whether non-potable ground water site condition standards may be applied.

Q12: What do I do if I have a background concentration (e.g. beryllium) content which is higher than the applicable site condition standard?

A12: Under the EPA, a contaminant is defined as follows:

contaminant means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

To file a Record of Site Condition a QP must be comfortable with signing the appropriate statements as per Schedule A of O. Reg. 153/04, given the conditions at the site. If it is a contaminant present in an area of locally elevated natural background concentration, it must meet a property specific standard no less than the local background concentration.

A property specific standard can be developed in an Estimation of Natural Local Background Concentrations risk assessment. Proponents must remember to consider whether there were any other sources of the contaminant of concern that may have contributed to the concentrations found on site. If the concentration exceeds Table 2, a human health and ecological risk assessment will be required. The requirements for an Estimation of Natural Local Background Concentrations risk assessment are described in Section 8, Schedule C, Part II, of O.Reg. 153/04 and in

the RA Procedures Document which are both available at:
<http://www.ene.gov.on.ca/envision/land/decomm/condition.htm>

The QP_{RA} also has the option to carry out a human health and ecological risk assessment of the property.

Q13: How should a Qualified Person take into consideration off-site impacts when conducting ESA work in relation to conducting a risk assessment?

A13: There are three possible situations associated with conducting offsite ESA work.

- 1) At a minimum the QP assesses the property in accordance with Section 7 of the Phase 1 ESA Standard. As access may be limited to off-site properties, investigation should occur to the extent possible (e.g. walk around, visual inspection etc...)
- 2) The QP assesses the RA property and based on the direction of groundwater flow, the site investigator needs to collect information to support the conceptual site model of a Risk Assessment. In the risk assessment, the Qualified Person for risk assessment (QP_{RA}) must certify whether the proposed property specific standard is likely to result in an exceedance of the applicable Site Condition Standard at the nearest off-site receptor. Possible receptor considerations may include proximity to surface water, human receptor exposure pathways (ingestion, inhalation, etc.), drinking water sources and other property specific considerations. If the QP_{RA} has concluded that no exceedance is likely, they must make a statement to that effect as part of the signed certifications in the risk assessment report.
- 3) Where the MOE is of the opinion that the presence of a contaminant may pose an adverse effect or that a substance may impair water, the owner may be ordered to undertake work to delineate the extent of the off-site contaminant plume and take any action that may be necessary to prevent the adverse effect from occurring.

Q14: If a property specific standards (PSS) is back-calculated from an acceptable Hazard Quotient of 0.2 or cancer risk level of 1E-6 (for example), and the PSS is less than the applicable Site Condition Standard (e.g., Table 3), does MOE allow the PSS to default to the applicable Site Condition Standards (SCS) (e.g., Table 3)?

A14: In this situation, the QP does have some discretion. Although the generic site condition standards are developed to be applied at the vast majority of sites in Ontario, the QP may determine that a more stringent standard is appropriate for use at a given site due to the unique conditions found at

that site (i.e. the assumptions used in the development of the generic SCS are not conservative enough for a given site).

Whichever approach is followed, the QP_{RA} must certify that the standards specified in the risk assessment report are unlikely to pose an unacceptable level of risk and will not interfere with the future use of the property.

Q15: Can the QP_{RA} screen for relevant COCs in the HHRA and/or ERA sections of a risk assessment?

A15: Table 1 of Schedule C of O.Reg. 153/04 requires that Section 3 of the risk assessment report include a list of all contaminants of concern (COCs). In Section 6 of the risk assessment report, a property specific standard must be specified for each COC identified in Section 3. The specified standard must be the more stringent of the human health based standard and the ecological based standard being proposed.

Any “screening” that occurs in the HHRA and/or ERA is considered by the MOE as a qualitative interpretation of risk and must result in a proposed standard. The procedures document provides guidance on performing qualitative risk assessment. Dropping COCs in the HHRA or ERA may leave the risk assessment report with no property specific standard for a COC, which could prevent the filing of an RSC.

Q16: What do I do when there is a “N/V” or “N/A” listed instead of a numerical standard?

A16: Section 43 of O.Reg. 153/04 details the regulatory requirements when a “N/V” or “N/A” is present in the Tables of Standards. A contaminant that is listed and for which the abbreviation “N/V” appears in the cell, instead of a number representing a maximum concentration, is a contaminant for which a standard is not prescribed. The abbreviation “N/V” means “no value”. A contaminant that is listed and for which the abbreviation “N/A” appears in the cell, instead of a number representing a maximum concentration, is a contaminant for which no standard is required. The abbreviation “N/A” means “not applicable”.

If a chemical has been measured at the property which does not have a ministry site condition standard, the QP_{ESA} must decide if the chemical is a COC. For example, natural elements of the earth’s crust (such as Al, Fe, Ca) may be measured but have no ministry site condition standards. These chemicals are generally ubiquitous in soil at non-toxic concentrations but may become limiting to site use at some concentration. The QP_{ESA} must determine within the context of the Phase two ESA if the presence of a chemical without a standard is naturally occurring in place or is trivial or if there is potential for concern.

Under the EPA, a contaminant is defined as follows:

contaminant means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

If the chemical is of potential concern, the chemical should be evaluated as part of the RA and a property specific standard should be developed. The QP_{ESA} should refer to the following sections in the RSC regulation for making this determination:

Part IX Section 43(3)

Schedule A certifications required in the RSC, including but not limited to Section 6,

Section 10(3), or

Section 16(2) and 17(3).

Where a chemical is measured and there is no site condition standard, the QP_{RA} has the following options; 1) submit a new science RA (refer to Section 9 of Schedule C on the RSC Regulation and Section 7.3.1 of this document) to propose a property specific standard or 2) to identify in the summary of site investigations in the RA report that, in the opinion of the QP_{RA} and the QP_{ESA}, a risk assessment is not required for this contaminant. The certifications made by the QP_{ESA} in the RSC will confirm that there is no evidence of contaminants left on the property that will interfere with the proposed use of the site.

Q#	F. SENSITIVE SITES	Date of Last Update
Q1	Can development occur on a site classified as sensitive under O.Reg. 153/04? Which site condition standards would apply?	February 1, 2008
Q2	O.Reg. 153/04 states that a site is sensitive if there is a permanent water body within 30m and thus soil, sediment and groundwater data must be compared to Table 1 (Background) site condition standards. Does the MOE only require evaluation of that portion of the Site that is within 30 m distance as “sensitive”? If this is the case, is it necessary to legally sever the Site into two properties (for two RSCs)?	February 1, 2008
Q3	How does MOE define the water body boundary when identifying a site as sensitive within 30m of a permanent water body?	February 1, 2008
Q4	How are shallow soil properties treated under O.Reg. 153/04?	February 1, 2008
Q5	Does the Regulation provide protection of actual habitat for threatened and endangered species, or species of special concern, where development of the site would destroy the on-site habitat for the species of concern?	February 1, 2008

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Q1: Can development occur on a site classified as sensitive under O.Reg. 153/04? Which site condition standards would apply?

A1: Yes, sensitive sites can be developed. If a site is classified as sensitive, it must meet Table 1 (background) site condition standards or standards specified in a risk assessment. All contaminants which do not meet Table 1 site condition standards must be risk assessed as contaminants of potential concern. Within the context of a risk assessment it is possible to demonstrate that a higher concentration is appropriate for the sensitive site area, either through a limited scope risk assessment (see Schedule C

Part II Section 7 paragraph 2 of O.Reg. 153/04) to allow use of the generic values or through a risk assessment to propose new site specific standard values.

Q2: O.Reg. 153/04 states that a site is sensitive if there is a permanent water body within 30m and thus soil, sediment and groundwater data must be compared to Table 1 (Background) site condition standards. Does the MOE only require evaluation of that portion of the Site that is within 30m distance as “sensitive”? If this is the case, is it necessary to legally sever the Site into two properties (for two RSCs)?

A2: Under O.Reg. 153/04, a property is considered sensitive if any part of the property is within 30m of a surface water body unless the portion of the property that is within 30m is surveyed as a separate parcel. In this case, two RSCs must be filed, one for the sensitive parcel and one for the non-sensitive parcel. A property does not have to be legally severed in order to file two RSCs.

For example, O.Reg. 153/04 states that a site is sensitive if there is a permanent water body within 30m and thus soil, sediment and groundwater data must be compared to Table 1 (Background) site condition standards to determine the contaminants of concern (COC). The site can have two RSCs, one for the sensitive area within 30m of surface water and one for the rest of the Site. Each RSC would then have its own set of standards. To treat a property in this fashion, legal surveys and legal property descriptions for each parcel must be provided. However, the parcels do not need to be legally severed. If a risk assessment is planned for one or both parcels, all aspects of a complete risk assessment for each individual parcel, including selection of COCs, provision of property specific standards, RMM (if necessary) and QP_{RA} certifications are required. The property owner has the option of submitting a single risk assessment or two separate risk assessments, so long as the legal surveys for each parcel are included in the PSF.

Additional information is available in the ministry Technical Update titled, “Environmentally Sensitive Areas: Property within 30 metres of a water body” and is available at: <http://www.ene.gov.on.ca/envision/gp/5448e.pdf>

Q3: How does MOE define the water body boundary when identifying a site as sensitive within 30m of a permanent water body?

A3: When defining where the 30m distance between a property boundary and surface water begins, the QP should try to address the average annual spring high water mark for the water body in their assessment; however, this will vary from body to body depending on circumstances such as the

nature and topography of the flood plain. Therefore, for consistency, the MOE will accept the definition from the Ontario Nutrient Management Regulation (O.Reg. 267/03) which defines the distance to surface water as being measured from “the top of the nearest bank of the Surface Water” (Section 44 (4) and 44 (5)).

Q4: How are shallow soil properties treated under O.Reg. 153/04?

A4: Under O.Reg. 153/04 (Section 41), if the depth of soil over bedrock is less than 2m for one third or more of the property area, a property is considered an ‘environmentally sensitive area’ and the Table 1 (Background) site condition standard must be used for filing a Record of Site Condition.

If Table 1 site condition standards are not met, the QP_{ESA} has the option to take a groundwater sample taken from an area of the property that does not meet Table 1 or, if no groundwater is available to sample, take an extract of contaminated soil taken from that area. If the groundwater or soil extract meet the extract and Ground Water Standards for Shallow Soils specified in Table 6 for all contaminants which do not meet Table 1, this is taken as evidence that the contamination is not sufficiently mobile to require the use of Table 1 in order to protect the ‘environmentally sensitive area’ condition. The QP_{ESA} can therefore use Table 2, 3, 4 or 5 as the applicable table of site condition standards when filing the RSC for this property.

Please note that if there is no standard provided in Table 6 for a contaminant (petroleum hydrocarbons, for example), a risk assessment will be required to justify use of a standard other than Table 1. It is possible to conduct a limited scope risk assessment (O.Reg. 153/04 Schedule C Part II Section 7 clause 2) to justify using Table 2 in this situation, provided the other provisions of Section 7 are met (no new science and no risk management).

Q5: Does the Regulation provide protection of actual habitat for threatened and endangered species, or species of special concern, where development of the site would destroy the on-site habitat for the species of concern?

A5: Section 41 of O.Reg. 153/04 pertains to site conditions standards for environmentally sensitive areas and states that this section applies in relation to a property if the property is within an area of natural significance or includes or is adjacent to such an area or part of such an area. Included in the definition of an ‘area of natural significance’ is habitat for endangered or threatened species identified by the Ministry of Natural Resources (MNR).

Section 41 states that the qualified person determines if it is appropriate to apply this section to the property given the characteristics of the property and the certifications the qualified person would be required to make in a record of site condition in relation to the property as specified in Schedule A. Therefore, if there is potential for loss of habitat for a rare or endangered species as a result of contamination remaining on the Site and the property owner has opted to develop property specific standards in a risk assessment, the QP_{RA} should notify the nearest MNR District Office and provide their response in the risk assessment. MOE can then assess whether or not to accept the risk assessment based on MNR concerns. It is the QP_{RA}'s responsibility to be aware of the 'Species at Risk Act' and inform MNR of any issue that might relate to the Act on their RA Site.

The appropriate response to the protection of an environmentally sensitive area is to consider the relative benefits of risk management strategies and remediation on the maintenance of sensitive receptors and their habitats. These considerations should be discussed in the risk assessment. Any risk management measures which will result in the loss of habitat will also be subject to public consultation through the posting of a CPU on the EBR.

Considering the loss of habitat as a result of the impacts from development of the RA Site (i.e. digging and building on the habitat) is beyond the scope of O.Reg. 153/04. As such, the Director under O.Reg. 153/04 has no authority over loss potential habitat for an endangered or threatened species as a direct result of development of the brownfield site. There are other processes for dealing with this issue (e.g. EA process, development applications, council permits, etc.). An interested member of the community can always raise the issue with the local council as well as the MOE or MNR district office.

Q#	G. WIDER AREA OF ABATEMENT CLASSIFICATION	Date of Last Update
Q1	When is a property designated as a wider area of abatement?	February 1, 2008

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Q1: When is a property designated as a wider area of abatement?

A1: O.Reg. 153/04 identifies a number of Alternative Risk Assessment approaches. The Wider Area of Abatement (WAA) is an alternative risk assessment approach. Section 10 of Schedule C of the Regulation states:

10. (1) *A risk assessment is a wider area of abatement risk assessment if the Ministry has identified the RA property to be within a wider area of abatement in its comments on the pre-submission form or in a notice issued under subsection 46 (2) of the regulation.*
- (2) *If the Ministry has identified the property to be within a wider area of abatement, the wider area of abatement risk assessment must include:*
 - a) *consultation with the applicable Ministry of the Environment District or Regional Office regarding the implications of the risk assessment report recommendations; and*
 - b) *development and implementation of a public communication plan.*

Reasons for considering a property to be in a WAA may include:

- Existing Control Documents (example certificate of prohibition, approval for a landfill or sewage works etc.);
- Contamination which extends beyond the property boundary;
- Contamination from an off-site source which comes onto the property (can also be addressed by a flow through RA);
- Co-mingled plumes on or off the property;
- Proposed risk management measures which may impact beyond the property boundary;
- Any kind of action required by a party other than the RSC property owner (including acceptance of a standard for adjacent property); and/or
- Community concern

Q1	H. USE OF MODELS	Date of Last Update
Q1	Would deviating from generic conceptual site model parameters trigger the requirement for restricted property use on an RSC?	February 1, 2008
Q2	Does MOE have a list of approved models that will not trigger a “new science risk assessment” designation?	February 1, 2008

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Q1: Would deviating from generic conceptual site model parameters trigger the requirement for restricted property use on an RSC?

A1: Only parameters intrinsic to the site characteristics can be modified, without triggering risk management, (e.g soil texture and depth to ground water table). Any deviations from the generic conceptual site model building parameters may require risk management.

For example, when assessing the infiltration of vapours to indoor air, modifications to the standard Johnson and Ettinger building parameters that have the effect of reducing risk and/or block exposure pathways may be considered risk management.

Q2: Does MOE have a list of approved models that will not trigger a “new science risk assessment” designation?

A2: The following models will not trigger a new science risk assessment designation. This list will be modified as models are fully reviewed by the ministry.

- USEPA Johnson & Ettinger
- RBCA tool Kit for Chemical Releases v.1.3 (Groundwater Solutions Inc., Houston TX)
- RISC 4

Q#	I. RISK MANAGEMENT	Date of Last Update
Q1	If the RA is qualitative, is it necessary to assess the level of risk in the absence of risk management?	February 1, 2008
Q2	Does the Risk Management Plan have to be signed/stamped by a P.Eng or P.Geo?	February 1, 2008
Q3	Why do I need a contingency plan as part of my risk management plan?	February 1, 2008
Q4	Why do I need financial assurance as part of my risk management plan?	February 1, 2008

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Q1: If the RA is qualitative, is it necessary to assess the level of risk in the absence of risk management?

A1: Yes. The O.Reg. 153/04 requires that regardless of whether a qualitative or quantitative RA approach is used for a contaminated site, property specific standards must be determined for each COC in support of filing an RSC for the site. For each property specific standard, the level of risk without and then with risk management measures (RMM), if required, must be reported in the RA submission.

A qualitative risk assessment may use highly conservative (screening level) exposure estimates or estimates based on MOE generic exposure scenarios (e.g. Rationale for the Development and Application of Generic Soil, Ground Water and Sediment Criteria for Use at Contaminated Sites in Ontario, MOE 1996) to develop property specific standards.

It is important for the ministry to be aware of the level of risk (without RMM) for a given property for the following reasons:

1. In the event that the RMM fail, the ministry must be aware of the level of risk (without RMM) present on a property;
2. For abatement purposes, the MOE district office needs to be aware of the level of risk (without RMM) on a property; and

3. The level of risk (without RMM) may influence the level of technical/engineering detail that goes into the CPU, the level of reporting back to the ministry and the need for financial assurance.

Q2: Does the Risk Management Plan have to be signed/stamped by a P.Eng or P.Geo?

A2: If risk management measures include engineered controls, the determination as to whether the risk management measure is within the practice of professional engineering or not must be made by a professional engineer in accordance with PEO guidance in this regard.

If risk management measures include hydrogeological components, the plan must be sealed or signed in accordance with the requirements of the Professional Geoscientists Act.

Sections of the RA that deal with RMM (e.g. Section 7 of Table 1 of Schedule C of the Regulation) normally do not need to be signed by a professional engineer or geoscientist. However, Section 4 (6) of Schedule C states the following:

(6) 7. If the risk assessment recommends a risk management measure that involves engineering or hydrogeological controls, an engineering or hydrogeological report prepared by a qualified person mentioned in clause 5 (a) or (b) of the regulation that includes detailed plans and specifications of the engineering or hydrogeological controls or both.

This report must be attached in an appendix to the RA and should be consistent with professional practice requirements for the professional engineer or geoscientist who prepared it.

The practices of Professional Engineering and Professional Geoscience are covered by their respective enabling legislation, as follows:

Professional Engineering Act

Professional Geoscience Act

Q3: Why do I need a contingency plan as part of my risk management plan?

A3: A contingency plan is required to ensure a workable course of action exists to mitigate risks should the risk management fail to perform according to plan. The required extent and detail of a contingency plan

may take into consideration the assessment of risk in the absence of risk management measures.

Q4: Why do I need financial assurance as part of my risk management plan?

A4: Financial assurance offers the ministry a means to ensure that risk management measures, and if necessary contingency plans, are implemented, maintained, operated, and monitored, as required, should the responsible person for the RMM no longer be available to do so. The need for financial assurance may take into consideration the assessment of risk in the absence of risk management measures.

Q#	J. Certificate of Property Use	Date of Last Update
Q1	What is a Certificate of Property Use?	February 1, 2008
Q2	Who receives a copy of the Certificate of Property Use?	February 1, 2008
Q3	Who is responsible for registering the risk management plan outlined in the Certificate of Property Use on property title? How is this done?	February 1, 2008
Q4	Why is the Certificate of Property Use important for municipal Building Officials?	February 1, 2008
Q5	Can a Certificate of Property Use be viewed on the Brownfield Environmental Site Registry?	February 1, 2008

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Q1: What is a Certificate of Property Use?

A1: A Certificate of Property Use (CPU) is a Control Document issued to a property owner in relation to an approved risk assessment with Risk Management Measures. The Director for the purpose of EPA s. 168.6 issues a CPU requiring property owner to:

- Take any action to prevent, eliminate or ameliorate any adverse effect on the property including installation of equipment, monitoring, reporting;
- refrain from using the property for any specified use;
- provide financial assurance as necessary; and,
- to register a Certificate of Requirement (CofR) on title.

Q2: Who receives a copy of the Certificate of Property Use?

A2: Section 168.6 of the Act has two provisions related to the persons who must receive copies of the CPU. The relevant subsections are found in 168.6(4) and 168.6(5).

For the purpose of s. 168.6(4) of the Act, if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property;

- the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
- the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and,
- the owner of the property shall ensure that every occupant of the property complies with the provision.

For the Purpose of 168.6(5) of the Act and Section 50 of O.Reg. 153/04, if a certificate of property use is issued, altered or revoked under this section, the Director shall give notice required for the purposes to the following persons in relation to a certificate of property use:

1. A chief building official as defined in the *Building Code Act, 1992* of the municipality in which the property is located.
2. The clerk of the local municipality in which the property is located.
3. The clerk of any upper-tier municipality in which the property is located.
4. If the property is located in an area in which a board of health, planning board or conservation authority has jurisdiction under Section 3.1 of the *Building Code Act, 1992*, in each of the following:
 - i The inspector appointed under that section who has the same powers and duties in relation to sewage systems as does the chief building official in respect of buildings.
 - ii The medical officer of health of the board of health, or the secretary-treasurer of the planning board or conservation authority.

Q3: Who is responsible for registering the risk management plan outlined in the Certificate of Property Use on property title? How is this done?

A3: The Risk Management Plan is not registered in the Land Titles or Land Registry systems nor is the Certificate of Property Use. Instead a Document General – Form 4: Land Registration Reform Act is completed making references to property information and the nature of the registration in relation to EPA 197(2) or OWRA 103(2). In addition, Item 8 of the Document General makes reference to a Schedule A. Schedule A is the Certificate of Requirement, drafted in a form approved by the Minister of the Environment, with property specific information, highlights of the environmental condition of the property (eg. soil contamination) and references to the Certificate of Property Use number.

Within the prescribed time frame specified in the Certificate of Property Use the owner or their agent will take a certificate (Document General and Certificate of Requirement prepared by the Ministry) to the proper land registry office and request it be placed on the title of the real property to which the requirement relates. The certificate is in a form approved by the Minister, is signed or authorized by the issuing Director who imposed the requirement and is accompanied by a registerable description of the property. The owner will be given documentation confirming the certificate has been registered and will present the Director with confirmation as required by the Certificate of Property Use.

Q4: Why is the Certificate of Property Use important for municipal Building Officials?

A4: EPA ss 168.6(6), Prohibition on construction or use, is applicable law under the Building Code Act. This subsection states that if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property, no permit, license, approval or other instrument shall be issued to any person, under any provision prescribed by the regulations, that would authorize the person to use the property for the specified use, to construct the specified building or to construct a building that will be used for the specified use. To issue a Building Permit, that permits a prohibited building type or use, would be an offense prosecutable under the EPA.

Q5: Can a Certificate of Property Use be viewed on the Brownfield Environmental Site Registry?

A5: Yes, the Certificate of Property Use can be viewed as an attachment to the RSC on the Brownfield Environmental Site Registry.

Q#	K. GENERAL/OTHER	Date of Last Update
Q1	What are some of the abbreviations commonly used in this FAQ and in risk assessment under O.Reg. 153/04?	February 1, 2008

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Q1: What are some of the abbreviations commonly used in this FAQ and in risk assessment under O.Reg. 153/04?

A1: RA: Risk Assessment
PSF: Pre-Submission Form
COC: Contaminant of Concern
HHRA: Human Health Risk Assessment
ERA: Ecological Risk Assessment
WAA: Wider Area of Abatement

RSC: Record of Site Condition
SCS: Site Condition Standard(s)
PSS: Property Specific Standard(s)
RMM: Risk Management Measure(s)
FA: Financial Assurance
CPU: Certificate of Property Use
CofR: Certificate of Requirement
BESR: Brownfields Environmental Site Registry

MOE: Ministry of the Environment
MNR: Ministry of Natural Resources
EPA: Environmental Protection Act

QP: Qualified Person
QP_{ESA}: Qualified Person, Environmental Site Assessment
QP_{RA}: Qualified Person, Risk Assessment

EA: Environmental Assessment